# MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Thursday, February 9, 2017 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair

Scott P. LeMarr

Commissioner

Robin S. Orchard

Commissioner

James Ashley

Director

Jason M. Porter

Chief Legal Counsel

Bob Charles

Legislative Affairs Chief / Public Information Officer

Sylvia Simpson

Chief Financial Officer

Renee Pastor Afshan Peimani Accounting Staff Attorney

William Warren
Brian Downen

ADOSH Director

Anthony Leyva

Compliance Officer Compliance Officer

Katherine Merems
Kara Dimas

Compliance Officer
Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Jesse Caso with Liberty Roofing; David Howard, Diane Starkweather, and Jeff Starkweather with Starkweather Roofing; and Jason Weber with Snell & Wilmer.

Approval of Minutes of January 26, 2017 Regular Meeting and January 26, 2017 Executive Session Minutes.

The agenda item for approval of the Minutes of the January 26, 2017 regular session and January 26, 2017 executive session meeting was moved to the agenda of the next regular session meeting.

#### Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

#### a. Approval of Proposed Civil Penalties Against Uninsured Employers.

- 1. 2C16/17-0261 Donald Barr & Lauri Barr, husband and wife, dba Angels on Duty
- 2. 2C15/16-2594 Eddie's Tire Shop LLC

- 3. 2C16/17-0264 First USA Moving & Storage L.L.C., dba USA Moving & Storage
- 4. 2C16/17-0646 Victorian Trucking LLC

## b. <u>Approval of Requests for Renewal of Self-Insurance Authority.</u>

- 1. Arizona Counties Workers' Compensation Pool
- 2. City of Chandler
- 3. City of Mesa
- 4. Regis Corporation
- 5. The Arizona School Alliance for Workers' Compensation, Inc.

Chairman Schultz noted the number of employees employed by Donald Barr & Lauri Barr, husband and wife, dba Angels on Duty. Commissioner LeMarr moved to approve the items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles discussed ongoing efforts to provide information to the Arizona Daily Star regarding ADOSH.

Mr. Charles provided an update on the status of the Commission's legislative bills regarding workers' compensation and ADOSH.

Chairman Schultz thanked Mr. Charles for his efforts and highlighted successful work to build a coalition to support the Commission's proposed legislation.

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

### Fendon Law Firm and E. Sanchez

Ms. Peimani discussed Mr. Matt Fendon's Petition for Attorney's Fees and staff's recommendation that Mr. Fendon receive fees (as outlined in the proposed Findings and Award Granting Attorney Fees) for a period of ten years after the subject Loss of Earning Capacity Award is issued.

Chairman Schultz and Ms. Peimani discussed the terms of the proposed Findings and Award Granting Attorney Fees, the ten-year statutory limit on an award of attorney fees, and the stipulation entered into between the parties.

Commissioner Orchard moved to approve staff's recommendation that Mr. Fendon receive fees (as outlined in the proposed Findings and Award Granting Attorney Fees) for a period of ten years after the subject Loss of Earning Capacity Award is issued. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

A Thru Z Consulting & Distributing, Inc.

Complaint

8620 E. Old Vail Road

Years in Business:

Empl. Covered by inspection: 26

20

Tucson, AZ 85747

8620 E. Old Vail Road

Tucson, AZ 85747

Inspection No:

Site Location:

L8503-1199427

Inspection Date:

10/19/2016

<u>SERIOUS</u> – Citation 1 - Item 1 – 13820 Camelback Rd in Litchfield Park, AZ 85340: One employee operating an Ingersoll Rand telehandler, with model number VR-843C, and serial number 189271, was not trained in the safe operation of the telehandler. (29 CFR 1910.178(l)(1)(i)).

McKenna Construction Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.602(d), which was contained in OSHA inspection number 1067209, citation number 1, item number 5 and was affirmed as a final order on 4/08/2016, with respect to a workplace located at 20677 E Maya Rd, Queen Creek, AZ 85142.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

#### <u>SERIOUS</u> – Citation 1 - Item 2 –

- a) Shop: A written respiratory protection program had not been established or implemented for employees that were required to use N95 respirators when welding on stainless, mild, galvanized steel and aluminium that include the following elements. (29 CFR 1910.134(c)(1)).
- b) Shop: Employees were exposed to hexavalent chromium when welding on stainless steel and initial monitoring had not been conducted to determine employee exposures to the air contaminants. (29 CFR 1910.1026(d)(2)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – Shop: Employees were exposed to injurious corrosive Avesta Classic Pickling Paste 101 without a suitable facility for quick drenching or flushing of the eyes and body for immediate emergency use. (29 CFR 1910.151(c)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

<u>SERIOUS</u> – Citation 1 - Item 3 – Shop: Employees were exposed to welding fumes including hexavalent chromium, corrosive metal treatment acids, lacquer thinners as well as other products without an established hazard communication program to include labels and other forms or warning, safety data sheets, and employee information and training. (29 CFR 1910.1200(e)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$4,750.00

TOTAL FORMULA AMT. - \$4,750.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Commissioner LeMarr, Mr. Warren, and Ms. Merems discussed exposure level testing for hexavalent chromium on the day of the inspection and the results of the testing.

Commissioner Orchard and Ms. Merems discussed the amount of welding performed on the day of the inspection.

Commissioner Orchard, Chairman Schultz, Ms. Merems, and Mr. Warren discussed the separate inspection conducted by the Safety & Health Compliance Office and the presence of guarding issues.

Commissioner Orchard and Ms. Merems discussed the employer's practices and procedures regarding the usage of masks and the information provided to employees by apprentice welders regarding the insufficiency of N-95 masks. Chairman Schultz, Commissioner Orchard, Commissioner LeMarr and Ms. Merems discussed proper usage of N-95 masks and the employer's knowledge regarding the standard and sufficiency of N-95 masks.

Commissioner Orchard moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Liberty Roofing, LLC

5758 W White Mountain Blvd

Lakeside, AZ 85929

Referral

Years in Business:

14 3

Empl. Covered by inspection:

Site Location:

7671 Marshalls Run

Show Low, AZ 85901

Inspection No:

A3807-1187222

Inspection Date:

10/25/2016

<u>REPEAT-SERIOUS</u> — Citation 1 - Item 1 — Roof: Three employees were working on a steep roof at heights exceeding approximately 14 feet above lower levels and were not protected from falling by guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(11)).

Liberty Roofing, LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(1) which was contained in OSHA inspection number 1157538, citation number 1, item number 1 and was affirmed as a final order on September 22, 2016, with respect to a workplace located at 6565 E. Broadway Blvd., Tucson, AZ 85711.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

<u>REPEAT-SERIOUS</u> – Citation 1 - Item 2 – Roof: Three employees were exposed to fall hazards at the height of approximately 14 feet above a lower level and did not receive training that would enable each employee to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Liberty Roofing, LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.503(a)(2) which was contained in OSHA inspection number 1157538, citation number 1, item number 2 and was affirmed as a final order on September 22, 2016, with respect to a workplace located at 6565 E. Broadway Blvd., Tucson, AZ 85711.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

<u>REPEAT-SERIOUS</u> — Citation 1 - Item 3 — Roof: Three employees utilized a 16 foot portable aluminium ladder to access the roof and the ladder side rails did not extend at least 3 feet above the upper landing surface that was accessed. (29 CFR 1926.1053(b)(1)).

Liberty Roofing, LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.1053(b)(1) which was contained in OSHA inspection number 1157538, citation number 1 and was affirmed as a final order on September 22, 2016, with respect to a workplace located at 6565 E. Broadway Blvd., Tucson, AZ 85711.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$10,000.00

TOTAL FORMULA AMT. - \$10,000.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Commissioner LeMarr discussed the presence of fall protection equipment, the company's knowledge of the training standard, the company's fall protection training program, and admissions by the workers that they had not received fall protection training.

Commissioner LeMarr, Commissioner Orchard, and Mr. Warren reviewed the usage of harnesses by the workers, discussed photograph no. 5, and discussed the basis for employer knowledge.

Chairman Schultz and Mr. Warren discussed abatement of the company's prior citations regarding fall protection and fall protection training.

Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed the company's training program, why the workers has not received fall protection training, and the classification of the training violation.

Commissioner LeMarr and Mr. Warren discussed whether the workers were trained in fall protection. Mr. Warren and Mr. Porter discussed the training records provided by the employer, various options for fall protection, and the ability to resolve disputes during the hearing process.

Chairman Schultz, Vice Chair Hennelly, and Mr. Warren discussed various options for fall protection on the project.

Mr. Caso discussed the phase of the project being performed at the time of the inspection and the use of fall protection equipment.

Commissioner LeMarr and Mr. Caso discussed the company's training program and the reason the workers on this site had not yet received fall protection training.

Commissioner Orchard moved to amend the citation and proposed penalties, as follows: (1) reduce the proposed penalty for Citation 1, Item 2 to \$2,000 (as a result of the employer's training program), for a total penalty of \$8,000.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Starkweather Roofing, Inc. 29455 N Cave Creek Rd Ste 188-631 Cave Creek, AZ 85331 Referral

Years in Business:

20

Empl. Covered by inspection:

6

Site Location:

320 E 10<sup>th</sup> Dr

Mesa, AZ 85210

Inspection No:

H9685-1189603

Inspection Date:

11/04/2016

#### SERIOUS - Citation 1 - Item 1 -

- a) 320 E 10th Dr, Mesa, AZ 85210: Six employees engaged in roofing activities on a low-sloped roof with unprotected sides and edges were not protected from falling over 8 feet 11 inches to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(10)).
- b) 320 E 10th Dr, Mesa, AZ 85210: The warning line erected on the roof a commercial building was not erected around all sides of the roof work area as there were approximately 3 foot gaps at the ends of each side of the roof exposing employees to a fall hazard over 8 feet 11 inches to the ground below. (29 CFR 1926.502(f)(1)).
- c) 320 E 10th Dr, Mesa, AZ 85210: The point of access from the extension ladder to the roof work area was not connected by an access path formed by two warning lines. (29 CFR 1926.502(f)(1)(iii)).
- d) 320 E 10th Dr, Mesa, AZ 85210: The warning line on the southeast side of the roof was less than 34 inches as it was sagging down to shin level. (29 CFR 1926.502(f)(2)(ii)). Div. Proposal \$2,000.00 Formula Amt. \$2,000.00

<u>SERIOUS</u> – Citation 1 - Item 2 - 320 E 10th Dr, Mesa, AZ 85210: The employer did not provide a training program for 6 employees exposed to fall hazards to enable each employee to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards while using a warning line and a safety monitoring system. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Commissioner Orchard, Mr. Warren, Mr. Downen, and Vice Chair Hennelly discussed the use of a warning line for fall protection, the applicable standards, and use of a safety monitor. Mr. Downen explained the grouping for Citation 1, Item 1.

Chairman Schultz discussed Starkweather Roofing's participating in the Chairman's Roofing Alliance, Starkweather's training program, and the equipment provided at the worksite.

Commissioner LeMarr and Mr. Downen discussed the referral leading to the inspection.

Ms. Starkweather discussed the company's background, extensive training program, and commitment to employee safety. She discussed her concerns with the training citation, the use of a safety plan for the project, whether the applicable OSHA standard requires a warning line, the foreseeability of the employee's actions, and employee misconduct.

Mr. Warren discussed the company's training records, the basis for the proposed training violation, and the presence of the violation at the time of the inspection. Mr. Downen discussed details

of his investigation, including information acquired regarding the use of a safety monitor at the project, and the basis for the proposed violations.

Commissioner Orchard and Mr. Warren discussed employer knowledge in the context of the proposed violations. Ms. Starkweather discussed the company's training records, training provided to the company's superintendent, the element of employer knowledge, and the defense of employee misconduct. Chairman Schultz and Ms. Starkweather discussed the ability for the company to raise the mentioned concerns during the hearing process. He reiterated the scope of the Commission's review.

Mr. Starkweather discussed his frustration regarding the costs involved in contesting a citation and the identity of the complainant. Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed the rights of business owners to be represented by legal counsel.

Vice Chair Hennelly, Mr. Downen, and Mr. Warren discussed the basis for the proposed training violation and the requirements of the standard for a warning-line system.

Commissioner LeMarr moved to amend the citation and proposed penalties, as follows: (1) delete Citation 1, Item 2 (based on Starkweather's extensive training program). Commissioner Orchard seconded the motion and complimented Mr. Downen on his knowledge, professionalism, and desire to educate and promote safety with companies across the state. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley and Chairman Schultz discussed the current state of the Commission's outdated claims system, the planned upgrade to the system, and anticipated capabilities of the new system. Mr. Ashley, Commissioner LeMarr, and Vice Chair Hennelly discussed logistics of implementing the new system. Mr. Ashley estimated that the new system will be ready for testing in Spring of 2018 and running by Summer of 2018.

Mr. Ashley discussed the status of the ALJ recruitment process.

Chairman Schultz and Mr. Ashley discussed an upcoming second Commissioner Gemba walk.

## Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced the AZAGC/ABA lunch event at the Capitol.

Ms. Dimas confirmed Commission meeting dates through March 2017, including a Commission meeting in Kingman, Arizona at the end of March 2017.

#### Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 2:27 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Bv

ames Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary